IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2262 OF 2004

Shah Rajendrakumar Shantilal ... Petitioner.

V/s.

The Principal,
S.K.Somaiya College Arts,
Science & Commerce and others. ... Respondents.

Mihir Desai for the petitioner.

K.K.Jadhav for the respondent Nos.1 & 2.

P.M.Palshikar, AGP for respondent Nos.4 & 5.

CORAM: V.C.DAGA, J.

DATED: 13th February 2007.

P.C.:

. This petition is directed against the order dated 8th June, 2004 passed by the Presiding Officer, Mumbai University & College Tribunal dismissing the appeal filed by the petitioner challenging the action of the management accepting his resignation contending that it was a forced resignation not in accordance with the provisions of the standard code and that it was withdrawn before its acceptance.

Factual Matrix :
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2. The factual matrix, in short, reveals that

the petitioner was appointed as a Junior Clerk in the year 1984 in K.J.Somaiya College of Arts and Commerce. In the year 1995, petitioner came to be appointed as Head Clerk on probation in the said college and was promoted as Office Superintendent in the year 1996.

3. It appears that the petitioner, on 19th August, 2003, tendered his resignation. The same was put up before the Governing Body of the college management on 15th September, 2003 and came to be accepted by the Governing Body with effect from 19th September, 2003. Consequently, vide letter dated 18th September, 2003, the decision of the Governing Body was intimated to the petitioner. However, the said letter could not be posted on that day. The said letter was, subsequently, tendered to the petitioner on 20th September, 2003 which he refused to accept. The respondent- management claims to have accepted and acted upon the resignation letter given by the petitioner.

4. According to the petitioner, the aforesaid resignation letter was never tendered, though the date mentioned on the resignation letter was 19th August, 2003. According to him, it was tendered on 18th September, 2003 under coercion leading to

surprise inspection of the cupboards of the college during which certain obscene C.D. containing pornographic material was found in the cupboard of the petitioner. According to him he was threatened with the police action. Consequently, under the fear of police action and arrest, he was made to confess that the C.D. recovered from his cupboard was belonging to him and that he had kept it in the office cupboard and that he was forced to submit antedated resignation letter carrying "19.8.2003".

5. The petitioner, treating the action of the management accepting resignation letter as an act of termination of his services, filed appeal before the College Tribunal, which came to be dismissed by the impugned order.

6. The College Tribunal, after having examined the facts and circumstances available on record, in the light of the rival submissions canvassed before it, came to the conclusion that the surprise inspection of the cupboards and the C.D. having pornographic material had no connection with the act of submitting resignation letter. Both the instances were quite independent

having no nexus with each other. The Tribunal further came to the conclusion that the withdrawal of the resignation letter was posted by the petitioner after having acquired knowledge of the acceptance of his resignation letter by the Governing Body of the college as such withdrawal had no effect in law.

7. The aforesaid findings of the Tribunal, as stated hereinabove, are the subject matter of challenge in this writ petition filed under Article 226 of the Constitution of India.

Consideration :

8. Having heard rival parties, it is clear from the impugned order that the Tribunal has scanned all the circumstances brought on record and also taken into account the documents placed before it. It is not in dispute that the resignation letter carries dated as 19.8.2003. It is not in dispute that surprise inspection of the computers of college was conducted on 18th September, 2003. It is not in dispute that on 15th September, 2003 the resignation letter was accepted by the Governing Body of the college management. The minutes of the said meeting are

placed on record. In the circumstances, the case sought to be canvassed by the petitioner that the instance leading to surprise check dated 18th September, 2003 and recovery of C.D. resulted in pressurising the petitioner in confessing his guilt and tender his resignation letter, cannot be accepted.

9. The letter written by the management dated 18th September, 2003 informing the petitioner about the decision taken by the Governing Body of the acceptance of his resignation letter dated 19th August, 2003 with effect from 19th September, 2003 appears to have been posted on 20th September, 2003 which was returned to the sender with postal endorsement "Refused. R to S". In this view of the matter, one has to draw an inference that the petitioner has refused to accept the letter knowing the contents thereof. Ample material is available on record that the letter seeking withdrawal of the resignation by the petitioner was tendered to the Principal of the College on 23rd September 2003. The copy thereof was addressed to the Trust was posted on the same date i.e. 23rd September, 2003. On the very same day, the petitioner was in receipt of

communication with regard to the acceptance of his resignation letter by the Governing Body of the college management in its meeting dated 18th September, 2003. In the circumstances, the Tribunal was justified in holding that the resignation letter was withdrawn by the petitioner after it became operative and accepted by the college management. In the aforesaid backdrop, none of the contentions raised by the petitioner hold water.

10. The last contention raised by Mr.Desai, learned counsel for the petitioner that the resignation letter was not in accordance with the provisions of the standard code for want of notice period needs to be rejected in view of the fact that the petitioner himself has mentioned in the resignation letter that it be accepted with immediate effect and, accordingly, the respondent-college management has accepted the same dispensing with the notice period. In the circumstances, petition is without any merit and devoid of any substance.

. Petition is, thus, dismissed with no order as to costs.

(V.C.DAGA, J.)